fruit of his professorship of the Law of Nature and of Nations in the University of Kiel. The present edition contains a facsimile of the original, an introduction by Professor von Bar of the University of Göttingen, and a translation by John Pawley Bate. The introduction explains that this work appeared a few years after Pufendorf, another of the junior contemporaries of Grotius, had overemphasized the theory denying the existence of a positive *jus gentium*, distinct from *jus naturale*, and that Rachel overemphasized the opposite theory. In other words, Pufendorf was a Naturalist and Rachel a Positivist, going much beyond Zouche. The whole of the dissertation on the Law of Nature is devoted to discussing differences between theories, and so is at least half of the dissertation on The Law of Nations. To-day such discussions seem dreary, uninteresting, and useless; but the bitter attacks on Hobbes may attract some readers. In the dissertation on The Law of Nations there are some passages of a practical nature (Sections XXXIX–LXXIX), containing rules regarding just war, destruction and plundering, capture, truce, postliminium, hostages, ambassadors and their retinue, and other matters. The author's method differs from Zouche's, in that there is less use of historical instances. There are many passages of an enlightened tone; and any one of scholarly taste will find it profitable to compare Rachel with the other early authorities.

Textor was still another of the junior contemporaries of Grotius. He was born in 1638; and he died in 1701. He was a professor of law in the University of Heidelberg. In 1680 appeared his *Synopsis Juris Gentium*. The present volumes give a facsimile of the earliest edition, an introduction by Professor von Bar, and a translation by John Pawley Bate. Textor is usually classed as a Positivist; but he is deemed by Professor von Bar not so extreme as Rachel, for Textor believes that the law of nations consists both of *jus naturae* and of customs.

Textor deals to some extent with private law and constitutional law; but, even while he is doing so, he has international law in mind, and it is to international law that he devotes vastly the largest part of his space. Among his topics are ownership of the sea, capture, ambassadors, public and private war, just causes of war, declaration of war, captives, postliminy, truces and armistices, treaties of peace, alliances, neutrality, and the rights of the victor. The discussion adequately cites historical facts and the views of earlier authors. Textor's own views cannot be said to be always progressive, but the tone of his work is thoroughly entitled to respect.

It only remains to add that these volumes of the Classics of International Law, like the *pre*-Grotian volumes heretofore reviewed, give precisely the proper basis for scholarly and practical investigation into the history and theory of the doctrines which will be presented by counsel arguing before any international tribunal and by statesmen participating in any international conference.

EUGENE WAMBAUGH.

A TREATISE ON THE LAW OF EVIDENCE AS ADMINISTERED IN ENGLAND AND IRELAND; WITH ILLUSTRATIONS FROM SCOTCH, INDIAN, AMERICAN, AND OTHER LEGAL SYSTEMS. By Pitt Taylor. 11th Edition by J. B. Matthews and G. F. Spear. London: Sweet & Maxwell, Ltd. (Toronto: The Carswell Co., Ltd.). 1920. 2 vols. pp. cii, 1468.

When Mr. Taylor was engaged in his historic controversy with Chief Justice Cockburn over *Bedingfield's Case*, he was confronted with a passage dead against him from the sixth edition of Roscoe's "Criminal Evidence." With a

certain glee he replied, "*Roscoe never wrote one line of the passage on which you rely.*" [1] It was by an editor of Roscoe, written years after his death, and incorporated into the text, according to what James Bradley Thayer called "a vicious method," without anything to show its separate origin. Taylor could hardly have foreseen that his own book would meet a somewhat similar fate.

This dovetailing process, which is such a frequent characteristic in English editions of dead writers, has been well done. In some instances the new sections have been indicated by a plan of numbering, but often it is hard to know where Taylor ends and the editors begin. The collection of statutes and decisions is large, and the two volumes will be convenient for lawyers who wish to learn the present state of the English authorities on Evidence. The legislation and Rules of Court are of value in connection with proposed enactments in this field in our various states. If, however, one goes to this book hoping to find the latest English reasoning on the difficult problems of Evidence, one will be disappointed. There is, indeed, some discussion of principles, but that for the most part is neither new nor English. The editors should not have omitted the preface to Taylor's first edition, or at least its opening sentence: "The following work is founded on 'Dr. Greenleaf's American Treatise on the Law of Evidence.'" [2] The leading English book on Evidence gives us in 1920 the same legal reasoning that Simon Greenleaf wrote down in 1842.

Sydney Smith infuriated Greenleaf's contemporaries by asking, "Who reads an American book?" He might have got his answer from Mr. Taylor. Section after section of this work acknowledges his indebtedness to the early editions of Greenleaf. But apparently Taylor and his editors stopped their American studies at that point, and read no more. If Taylor, like many great English text-writers — Lindley on Partnership is an example — had limited himself to English sources and refrained from consideration of American authorities, an American reviewer would have no just cause to regard the omission of distinguished treatises and important decisions on this side of the Atlantic as a serious shortcoming. It is, however, inexcusable that a book confessedly based upon Greenleaf should wholly ignore the overhauling which all his ideas have received from Wigmore. The editors should at least have embodied the results of Wigmore's edition of Greenleaf, even if they were ignorant of his own Treatise. Furthermore, they should either have cited no American cases at all or else given a selection which would adequately represent the present American law of Evidence. Instead, they give an occasional old decision from Greenleaf's footnotes, usually in the form of a reference to the American State Reports followed by "(Am.)" and nothing more. Apparently for these editors all American cases are created equal, and it is not considered worth while to mention the name of the state deciding them. Even if we concede that an extensive acquaintance with the output of forty-eight state courts and the lower United States courts is too much to ask, at least it would have been helpful to include decisions by the United States Supreme Court on points in Evidence which are still unsettled in England.

Stories are told of Arctic explorers who emerged after years in the northern waste to learn that the European War had begun and ended without their knowing anything about it. For all that the editors of the eleventh edition of Taylor reveal, either in their text or their footnotes, nothing has happened to

[1] "A Letter to the Lord Chief Justice of England, by John Pitt Taylor," London, 1880, page 13; see THAYER, LEGAL ESSAYS, 212, note.

[2] "If Mr. Taylor, in abandoning his original purpose of merely editing Greenleaf, had indicated the real nature of his book, not merely in the ample acknowledgments found in his preface and elsewhere, but in the title of his book; if, for instance, he had called it 'Taylor's Greenleaf' — less dissatisfaction with his course would have been felt on this side of the water." THAYER, LEGAL ESSAYS, 210, note.

the principles of Evidence in this country since Greenleaf wrote. There is not a trace of influence from any subsequent discussion. Apparently they have never consulted an article in our law reviews, never read a line of Wigmore's five volumes or of Thayer's Preliminary Treatise on Evidence, which Sir Frederick Pollock[3] pronounced "A book which goes to the root of the subject more thoroughly than any other text-book in existence."

This insularity is not generally characteristic of English writers. Maitland paid tribute to Thayer. His books and Wigmore's were reviewed at length in England.[4] Pollock reinforces his discussion of inevitable accident in Torts by the *Nitro-Glycerine Case*,[5] and devotes an article to *Abrams* v. *United States*.[6] Yet the editors of Taylor ignore important Supreme Court cases on the hearsay rule, cite Wigram's theory of interpretation without mention of Holmes's essay,[7] and discuss *Bedingfield's Case*[8] without a word about Thayer's exhaustive review of the Taylor-Cockburn controversy, though it has been in print forty years.[9]

The consequence of such omissions in successive editions of a leading English work on Evidence is not only to render the book itself seriously inadequate in its analysis of legal principles, but also to make easier confusion in judicial thinking. Although the English law of Evidence, under the Judicature Act and the Rules of Court, is, far more than ours, "harmonious with the present demands of justice,"[10] several important questions still remain open, and a book like this gives the courts no aid in solving them. For example, the *res gestae* exception to the hearsay rule was left by Taylor in a tangle. Four absolutely different types of utterances are lumped together under this heading: (1) words which are important from the mere fact that they were spoken even if they are untrue;[11] (2) declarations of physical or mental condition; (3) declarations accompanying a material act;[12] (4) admissions by an agent. Thayer analyzed Taylor's errors in 1881,[13] but they are still uncorrected in 1920. A good discussion of these points in the footnotes to a leading English textbook, as Taylor's has always been, might avoid the dubious reasoning of such a decision as *Lloyd* v. *Powell Duffryn*,[14] which, by the way, the editors fail to cite although it was decided by the House of Lords six years before they went to press.

Take another example. *Sugden* v. *Lord St. Leonards*[15] left the hearsay rule in much uncertainty, especially the admissibility of declarations by the testator of his testamentary intentions. The editors do not mention this case in their discussion of the hearsay rule. They do not cite *Woodward* v. *Goulstone*[16]

---

[3] 15 L. Q. R. 86.

[4] Thayer's Preliminary Treatise in 13 L. Q. R. 208, 15 L. Q. R. 86; his Legal Essays in 24 L. Q. R. 219; Wigmore on Evidence in 21 L. Q. R. 193, 323, and 24 L. Q. R. 222.

[5] 15 Wall. (U. S.) 524 (1872).

[6] 250 U. S. 616 (1919). See L. Q. R. (1920).

[7] TAYLOR, 11th ed., 774, note; Oliver Wendell Holmes, "The Theory of Legal Interpretation," 12 HARV. L. REV. 417 (1899), and his COLLECTED LEGAL PAPERS, N. Y. 1920, 203. Even the able monograph of an Englishman, F. Vaughan Hawkins, in 2 JURID. SOC. PAPERS, 298, is not mentioned by Taylor's editors.

[8] 14 Cox C. C. 341 (1879).

[9] "Bedingfield's Case — Declarations as a Part of the Res Gesta," 14 AM. L. REV. 817, 15 *ibid.*, 1, 71; THAYER, LEGAL ESSAYS, 207.

[10] 1 WIGMORE, EVIDENCE, § 8.

[11] For instance, the offer and acceptance in an oral contract.

[12] These alone fall properly under the *res gestae* exception.

[13] See note 9, *supra*.

[14] [1914] A. C. 753; see 28 HARV. L. REV. 299. TAYLOR, 11th ed., 460, cites the same case in the Court of Appeal for another point *sub nom.* Ward *v.* Pitt.

[15] 1 Pro. Div. 154 (1876).

[16] 11 A. C. 469 (1886).

at all, though in the House of Lords. If they had read Wigmore or the Supreme Court decisions in *Hillmon* v. *Mutual Life Insurance Co.*,[17] and *Throckmorton* v. *Holt*,[18] they would have been saved from such a blunder. They do not discuss the admissibility of declarations of intention as evidence of a subsequent act. They do not even cite a decision of Lord Alverstone in 1912,[1] excluding such declarations in an abortion case. An English text-book discussing the *Hillmon Case* might lead to a different result in another case of declarations of intention, for it is plain that the American cases and the principle underlying them were wholly unknown to court and counsel in the abortion case. Of course, the present editors of Taylor cannot be blamed for these past decisions, but they have done nothing to furnish the English Bar and Bench with better theoretical equipment for the future.

Surely, the nation which has produced the great treatises of Maitland, Dicey, Pollock, and many others, might spend the immense labor which has gone into these two volumes for a better purpose, and give us a survey of the English law of Evidence in the light of twentieth-century thought, instead of warming over for the eleventh time the words of an American, an energetic pioneer fourscore years ago but long superseded in his own country.

Z. C., JR.

THE EQUALITY OF STATES IN INTERNATIONAL LAW. By Edwin DeWitt Dickinson, Ph.D., J.D. Being Volume III of the Harvard Studies in Jurisprudence. Cambridge: Harvard University Press. 1920. pp. xiii, 424.

"Equality is one of the natural and primitive rights of nations. . . . The equality of sovereign states is a generally recognized principle of public law." So says Calvo;[1] such are the common statements which pass current among the writers of international law, and which with little change, to use the words of Hobbes, have passed "like gaping, from mouth to mouth." As to what is the fundamental meaning of this threadbare assertion, what are the practical consequences in the domain of international law which necessarily follow, what its origin and its history, comparatively few have stopped to inquire.

Mr. Dickinson, in his studious book recently published, has made a careful inquiry as to the sources and origin of this principle of the equality of states, and has traced the historical development of the idea down to our own times. Writing after painstaking and scholarly investigations, Mr. Dickinson shows that the idea of state equality did not originate, as many suppose, with that great monument of international law, *De Jure Belli ac Pacis*, nor was the idea even stressed by Grotius in that epoch-making book. Its origin is to be traced, rather, to the Law of Nature, a conception which goes directly back to the days of Greece and Rome. No principle was more familiar to Roman lawyers or to Greek philosophers than that in the famous phrase of Ulpian, "quod ad jus naturale attinet, omnes homines aequales sunt."[2] What could be more natural than for the seventeenth-century writers, immersed in the teachings of ancient classics and in the principles of natural law, to apply to states, in the system of international law which they were evolving, this universally accepted principle of equality, just as the Roman lawyers had applied it to the persons of municipal law?

---

[17] 145 U. S. 285 (1892).
[18] 180 U. S. 552 (1901).
[19] Rex *v.* Thomson, [1912] 3 K. B. 19 (C. A.).

[1] Dictionnaire, I, 286.
[2] Digest, L, 17, 32.